THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 16927 of 2002

Dated 27.01.2006

Between:

Indian Medical Association Hall,

rep. by its Secretary, Sri.B.Ajay Kumar S/o.B.Radhakrishna & another.

..... PETITIONERS

AND

The Khammam Municipality Council
rep. by its Commissioner Khammam District & others

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 16927 of 2002

O R D E R:

Questioning the proceedings of the first respondent dated 20.08.2002, the present writ petition is filed.

The first petitioner is the Indian Medical Association and the second petitioner is the Managing Trustee of Indian Medical Association Charitable Trust. The first respondent transferred an extent of 1000 sq. yards, equivalent to 836.10 sq. mts, situated between L.I.G.H Quarters at Mamillagudem locality of Khammam Town in favour of the first petitioner by way of gift deed dated 16.07.1984, the Municipal Council Resolution No.413 dated 16.02.1982, and the proceedings of the District Collector, Khammam, dated 28.06.1984. It is the petitioner's case that a community hall was constructed over the said land obtaining permission from the Municipal Council, Khammam, vide proceedings dated 05.02.1988, and in accordance with the provisions of the A.P. Municipalities Act, 1965 (for short 'the Act') and the rules made thereunder. The affidavit, filed in support of the writ petition, details several achievements of the first petitioner-association and its reputation among the public. Reference is made to free medical camps being conducted, free medicines being distributed and, specifically in paragraph 5, that the Indian Medical Association Hall is being let out for the purpose of organizing functions in Khammam town, apart from being used by the Indian Medical Association for conducting meetings and conferences. Reference is also made to the encomiums paid by voluntary organizations including "Rotary Club", which had conducted its meetings in the petitioner's lecture hall.

It is stated that when the first respondent issued notice on 04.07.2002, informing that letting out the Indian Medical Association Hall, for private and public functions and for conducting meetings of political parties, was causing sound pollution and that garbage was being thrown out by the functionaries, the petitioners submitted a representation to the first respondent that no sound pollution was being caused and no garbage was thrown in the surroundings of the Indian Medical Association Hall. The petitioners are said to have again

represented to the first respondent, in reply to the notices dated 04.07.2002 and 27.07.2002, that no sound and weather pollution was caused in using the Indian Medical Association Hall for functions. Petitioners would submit that the first respondent had demanded a sum of Rs.3,000/- for removal of garbage and since they had paid the garbage fee of Rs.3,000/-, the Khammam municipality was statutorily bound to lift the garbage. It is contended that the first respondent did not impose any conditions while granting permission for construction of the lecture hall, and that no notice has been received from the Pollution Control Board of their creating air and sound pollution to the detriment of the health of the people of Khammam Town. According to the petitioners all the disputes arose because the third respondent, a neighbour to the petitioners' function hall, had constructed his house without leaving any set-back and since he tried to occupy a part of the road, which was successfully prevented by the members of the petitioner-Association, the third respondent had submitted a false complaint to the first and second respondents.

It is not in dispute that neither the resolution of the Municipal Council, Khammam nor the gift deed dated 16.07.1984, prescribe any condition regarding the purpose for which the gifted land is to be utilised nor does it impose any condition requiring the petitioners, upon construction of the Hall, to exclusively use it for conducting lectures. All that the resolution and the gift deed mandate is that the petitioners should construct a lecture hall for use of the Indian Medical Association.

Sri C.V.Mohan Reddy, learned Senior counsel appearing for respondents 4 to 18, would contend that the very fact that the gift deed refers to allotment of land to be used for the purpose of construction of a building for the use of Indian Medical Association, necessarily means that the said building cannot be used for any other purposes or for functions such as marriages etc. Learned Senior counsel would refer to the proceedings of the Khammam Municipality dated 05.02.1988, whereunder permission was granted for construction of a lecture hall, and contend that since permission was accorded by the municipality only for construction of a lecture hall, it cannot be used for any purpose other than for conducting lectures. Learned Senior counsel would place reliance on Sections 212, 213 and 250 of the Act to contend that the very existence of the Indian Medical Association Hall, wherein marriages are being conducted, is a

public nuisance and causes inconvenience to the general public. Learned Senior counsel would also submit that the resolution of the Municipal Council gifting the said land and the gift deed dated 16.07.1984, are subject matter of challenge in W.P.No.27402 of 2005 and that this Court had passed an interim order, on 23.12.2005, directing the petitioners herein not to conduct marriages in the said hall.

Sri Pollisetty Radha Krishna, learned Standing counsel for Municipalities, would submit that since the Indian Medical Association building was also being used for functions like marriages, political meetings, death ceremonies etc. it was a health hazard and a public nuisance, and that fire-wood, being used for cooking, was causing general inconvenience to the neighbours. Learned counsel would submit that since the very object of donating land to the members of the Indian Medical Association was to construct a building for the use of Indian Medical Association, and not for any other purpose, letting out the building for rent was in contravention of the said object.

From the affidavit filed in support of the writ petition and the reply affidavit, it is clear that the Indian Medical Association is letting out the lecture hall for conducting conferences and meetings of the members of the association, and in addition thereto the hall, whenever it is vacant, is also let out for other functions including marriages. It is not in dispute that the money received therefrom goes to the account of the Indian Medical Association.

While Sri K.Pratap Reddy, learned Senior counsel appearing on behalf of petitioners, would contend that the preamble of the gift deed cannot be construed as a condition, both Sri C.V.Mohan Reddy, Learned Senior Counsel and Sri P. RadhaKrishna, Learned Standing Counsel would submit to the contrary. It is unnecessary for this Court to delve further on this contention inasmuch as letting out the building on rent, on occasions where the association is not in a position to use it for its conferences or other functions, cannot be said as not to be for the use of the Indian Medical Association. Since the validity of the Municipal Council resolution, allotting the said land to the petitioners, and the validity of the gift deed is in issue in W.P.No.27402 of 2005, it is also unnecessary for this Court to examine the other contentions raised in the counter affidavit, filed on behalf of the respondents 4 to 18, such as the validity of the allotment etc since these are stated to be the subject matter of

challenge in W.P.No.27402 of 2005. Suffice to state that in a writ petition filed by the Indian Medical Association, neither the validity of the Municipal Council resolution nor that of the gift deed can be permitted to be questioned by respondents 4 to 18.

On a specific query from this Court as to whether the petitioners had contravened any statutory provisions in conducting marriages in their Association building, Sri Pollisetty Radha Krishna, Learned Standing counsel for Municipalities, would refer to sections 212, 213, 217 and 263 of the Act, while Sri C.V.Mohan Reddy, Learned Senior counsel, would place reliance on section 250 of the Act.

Section 212 prescribes the period within which the Commissioner signifies his approval or disapproval of a site on which construction is required to be carried on. Section 213 prescribes the period within which the Commissioner has to grant or refuse to grant permission. Since it is not in dispute that construction of the building, by the Indian Medical Association, is with the prior approval of the Khammam Municipality, sections 212 and 213 have no application. Section 217 confers power on the Commissioner to require alteration of work. In cases where the work is contrary to the approved plans or specifications or is in contravention of any of the provisions of the Act or any bye-law or rules made thereunder the Commissioner may, by notice, require the owner of the building to make such alterations as may be specified. This provision has also no application since it is not even the case of the Municipality that the building constructed by the petitioners-Association is contrary to the plans and specifications or the provisions of the Act, bye-laws or regulations made thereunder. Section 250 confers power on the municipal health officer to demolish an insanitary building and if any building or portion thereof is of insufficient height, lacks proper drainage, ventilation, or is attended with danger of disease to the occupier thereof or to the inhabitants or is likely to endanger public health or safety, the municipal health officer is empowered to require the owner of the building to execute such works or to take such measures as he may deem necessary for prevention of such danger. Firstly, the impugned order is not by the municipal health officer. In any event, no notice has been given under Section 250 of the Act that the building by itself endangers public health or safety. Section 250, therefore, has also no application.

Section 263 empowers the council to publish a notification in the prescribed manner that no place within municipal limits or at a distance within three kilometers of such limits shall be used for any one or more of the purposes specified in Schedule IV without the licence of the Commissioner. Sri Pollisetty Radha Krishna, learned standing counsel for Municipalities, would refer to clause J in Schedule IV to contend that conducting marriages in the Indian Medical Association building would, in effect, mean that it was run as a choultry and that the petitioners were precluded from conducting marriages without obtaining a licence under section 263. This contention does not merit acceptance. It is only on a notification being published in the prescribed manner, by the council, requiring persons to obtain licence for any of the purposes specified in schedule IV, would section 263 apply. Neither in the impugned order nor in the counter affidavit, has any such plea been taken. There is nothing on record to indicate that the Khammam municipality has published a notification, under Section 263 read with Schedule IV, prescribing licences for conducting marriages.

As long as the resolution of the municipal council and the gift deed continue to remain in force, and in the absence of any statutory violation, the petitioners are not, in law, precluded from conducting functions, including marriages, in their lecture hall. Respondents 4 to 18 contend that, by virtue of marriages being conducted in the lecture hall of the first petitioner, garbage is being thrown out, which results in traffic congestion and that air and sound pollution is caused. Insofar as these allegations are concerned, maintenance of hygiene is primarily the function of the municipality. Sri K.Pratap Reddy, Learned senior counsel, would draw attention of this Court to the fact that the petitioners were called upon to pay Rs.3,000/- for removal of garbage which they, had in fact, paid. In any event, since maintenance of hygiene is among the statutorily prescribed function of the municipality, in case, it finds that the petitioners have caused hindrance thereto, it is always open to the Municipality to take such action as is permissible in law.

The proceedings of the Commissioner, Khammam Municipality dated 05.02.1988, is an order granting permission, under Sections 212 and 213, to the

first petitioner for construction of a lecture hall, subject to the conditions prescribed thereunder being fulfilled. While referring to these proceedings, whereby permission was accorded for construction of a lecture hall, Sri C.V.Mohan Reddy, Learned senior counsel, would contend that the first petitioner was therefore not entitled to use the building for any other purpose other than for conducting lectures. This contention does not merit acceptance. The nomenclature of "lecture hall" used in the said proceedings dated 05.02.1988 is of no consequence. The proceedings dated 05.02.1988 is an order granting permission for construction subject to fulfilment of the conditions prescribed therein. None of the conditions prescribed in the said proceedings dated 05.02.1988 require the first petitioner to use the constructed building only for lectures nor is there any prohibition therein from giving the building on rent for other functions such as marriages etc.

Insofar as pollution is concerned except for a bald assertion, in the notice and in the impugned order, that sound and weather pollution is being caused, no details are furnished with regards the prescribed decibel limits and as to whether such limits are exceeded when marriages are conducted in the first petitioner's hall. With regards pollution, resulting from the use of fire-wood for cooking, no details are furnished as to the extent of air pollution caused thereby and whether it is in excess of the prescribed limits. In the absence of a detailed verification as to whether the prescribed limits in this regard are exceeded, the petitioners cannot be held to have caused air pollution by merely permitting marriages to be conducted in their building.

The impugned order is accordingly quashed. It is made clear that this Court has not examined the validity of either the municipal council resolution dated 05.02.1988 or the gift deed dated 16.07.1984, whereby land of an extent of 1000 sq. yards was gifted to the petitioners. It is also made clear that if, on verification, the official respondents find that the petitioners have acted contrary to law, it is always open for them to take action against the petitioners in accordance with law.

The writ petition is allowed and the impugned order is quashed. However, in the circumstances, without costs.

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27.01.2006

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